SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 394

IN THE MATTER OF APPLICATION OF BEN G. LEVY FOR ADMISSION TO PRACTICE IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS, PETITIONER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

DESIGNATION OF RECORD ON APPEAL—Filed December 7, 1953

To V. Bailey Thomas, Honorable Clerk of Said Court:

Appellant Ben G. Levy, hereafter referred to as Applicant, hereby designates the following numbered items to comprise the Record on Appeal to the United States Court of Appeals for the Fifth Circuit from the Order of this Court entered in this matter on November 24, 1953:

I

Applicant's Application for Admission to the Bar of this Court, dated June 25, 1953, with attached Exhibits consisting of Affidavit, Certificate of Enrollment issued by Clerk, Supreme Court of Texas and Letters of Recommendation;

II

Bar Committee's Recommendation and Report on above Application, dated September 28, 1953;

III

Applicant's Exceptions to above Committee's Recommendation and Report, dated November 17, 1953;

IV

Transcript of proceedings had before this Court in this matter on November 19, 1953;

[fol. 2]

V

Order of this Court entered November 24, 1953, in this matter;

VI

Notice of Appeal from the above Order filed December 3, 1953, including the Appeal Bond;

VII

This designation of Record on Appeal, filed December 7, 1953.

(S.) Ben G. Levy, Attorney at Law.

901 Scanlan Building, Houston 2, Texas, CApitol 9608.

[fol. 3] In the United States District Court for the Southern District of Texas, Holding Sessions at Houston

Ex Parte: Ben G. Levy (for Admission to Practice in U. S. District Court) Southern District of Texas.

Be it remembered: That in the above entitled cause, lately pending in said Court, an Order of Court, Approving Bar Committee's Report and Recommendation that Ben G. Levy denied Admission to the Bar of this Court was rendered at the Regular September 1953 Term of said Court to-wit:

On the 24th day of November A. D. 1953, the Honorable T. M. Kennerly, Allen B. Hannay, and Ben C. Connally, Judges of the United States District Court for the Southern District of Texas, presiding, the following proceedings were had, to-wit:

Application of Ben G. Levy for Admission to Practice

Office of the Clerk, United States District Court, Post Office Building, 701 San Jacinto Street, Houston 2, Texas.

Dear Sir:

In accordance with Rule 5(b) of the Local Rules of the United States District Court for the Southern District of [fol. 4] Texas, relating to the admission of attorneys, I am hereby making application for admission to the Bar of the said Federal District Court.

Attached hereto is the affidavit in duplicate, together with two letters and documentary evidence of my license in the State of Texas, all of which are required by Rule 5(b).

Trusting that these papers include all the necessary data, I am,

Very truly yours, (S.) Ben G. Levy.

BGL/ni
Encl.

The STATE OF TEXAS,
County of Harris:

Before Me, the undersigned authority, a Notary Public in and for Harris County, Texas, on this day personally appeared Ben G. Levy, to me well known, and who, after being by me duly sworn, did depose and say that the facts, statements, and allegations set forth below are true and correct:

"I was born April 18, 1927, in New York City, New York, the son of Lester Levy and Sadie Rebecca Levy. I presently reside at 816 Holman Street, Houston, Texas, where I have been living approximately one-and-one-half years. On November 17, 1952, I was duly enrolled as an attorney in the Supreme Court of Texas and have been licensed to practice in all the Courts of the State of Texas. Since my admission to the State Bar of Texas, I have practiced law only in Houston.

[fol. 5] "After serving in the United States Naval Service for approximately one-and-one-half years, I was given an honorable discharge on July 17, 1946. I have never been either convicted or accused of any crime in my life, either felony or misdemeanor. I hold a B. S. Degree from the College of the City of New York, and an LL.B. Degree from the South Texas College of Law."

Ben G. Levy.

Sworn To And Subscribed before me by the said Ben G. Levy, this the 25 day of June, A. D. 1953, to certify which witness my hand and seal of office. (S.) I. J. O'Connell, Notary Public in and for Harris County, Texas. (Seal.)

Card No. 7160 with Morris Bogdanow.

Paranthetical insertion written by Chairman of Bar Committee, M. S. McCorquodale, after submission by Applicant.

B. G. Levy.

Law Offices Of
Andrew M. Smith,
1st National Bank Building,
Houston, Texas

June 26, 1953.

Presiding Judge,
United States District Court,
Houston, Texas.

Dear Sir:

Mr. Ben G. Levy has advised me that he is an applicant for admission to practice before the Federal Courts of this [fol. 6] District. I have known Mr. Levy for approximately a year, have observed his conduct professionally and otherwise. I believe that he is qualified in every respect for admission to practice before the Courts to which he has applied for admission. I do not hesitate to recommend him.

Very truly yours, (S.) Andrew M. Smith.

AMS/bg

Herbert Finkelstein,
Attorney at Law,
305 Houston Bank & Trust Bldg.,
Houston, Texas

June 22, 1953.

Presiding Judge,
United States District Court,
Houston, Texas.

Dear Sir:

I am pleased to recommend Mr. Ben G. Levy for admission to the federal bar. I have known Mr. Levy for about one year and in my opinion he is competent to practice in the United States District Courts. I believe that he possesses all the qualifications required for admission to the bar of the United States District Court for the Southern District of Texas. I have examined Mr. Levy's personal

statement and affirm that his private and professional character and standing are good.

Respectfully yours,

(S.) Herbert Finkelstein.

hf/e

[fol. 7] 1952 1952

Supreme Court of Texas

This is to certify that Ben G. Levy is duly enrolled as an attorney in the Supreme Court of Texas. That he has complied with the provisions of the State Bar Act and is a member of the State Bar in good standing.

Given under my hand and seal of the Supreme Court of Texas, this the 17th day of November, 1952.

(S.) Geo. H. Templin, Clerk, Supreme Court of Texas.
#10945

(Copy of Card Certificate issued by Clerk, Supreme Court of Texas.)

Signature of Member: Ben G. Levy, Of Houston, Texas.

In United States District Court

Report of Bar Committee to Judges—Sept. 28, 1953

Re: Application of Ben G. Levy for Admission to the Bar
To the Honorable District Court:

The above applicant has not satisfied the Committee that he is entitled to admission, and your Committee recommends [fol. 8] against a license in this instance.

He is associated with Morris Bogdanow, who is generally considered to be a member of the Communist Part-. At least, he is referred to as a communist openingly and in publications.

In previous cases, we have had valuable as-istance from the F. B. I. in getting some idea about whether applicants are communists. In the case of Mr. Bogdanow, assistance was declined. Expressing purely an opinion, we are inclined to believe that there was no lack of willingness to

cooperate, but rather that the information is such as the Agent-In-Charge did not care to reveal it.

The applicant denied being a communist. Asked whether his employer, Mr. Bogdanow, was a communist, the applicant replied: "I don't know."

The applicant was born and reared in New York and came to Houston only a few years ago.

We are not sure we can believe his statement that he does not know Mr. Bogdanow's communistic views, since they are a matter of common knowledge to the Bar and to the newspapers.

We have not been favorably impressed with this applicant, although our acquaintance is confined to a hearing given to him.

Your Committee has never been given suggestions by the Court, either generally or specifically. We wish the Court to know that in any case in which the Court might like to have a record, we will be glad to take testimony of the applicant, or available witnesses, as authorized by the present rule under which we operate.

This applicant has made insistent inquiries of the Committee, but, as usual, we declined to give him any information, stating that we did not feel at liberty to discuss any action with an applicant. We have felt that it is for the [fol. 9] Court to make any disclosure to the applicants, if any disclosure is to be made. We anticipate the Court will receive some inquiry from this applicant.

Mr. Levy's application was held under consideration some what longer than usual because it came up during the summer, and, due to absence from the city of members of your community, on vacation during the latter part of August, we have been unable to convene a full Committee until recently. We never recommend against an application without consideration of all members of the Committee.

Respectfully, For the Committee,

(S.) M. S. McCorquodale, Chairman.

MSM:F

In United States District Court

Applicants Exceptions to the Bar Committee's Report—Filed November 17, 1953

To The Hon. T. Kennerly, Han. Allen B. Hannay, and Hon. Ben C. Connally, Judges of Said Court:

Now Comes, the above Applicant and respectfully shows to the Court that in the several respects hereinafter mentioned, the Committee on Admissions has erred to the prej-[fol. 10]udice of this Application in its report and conclusions, to-wit:

I

For the Committee to decide competently that an applicant is not entitled to admission, it is submitted that the whole Committee should be present at the hearing which so determines his eligibility. In this instance, only one Committee member conducted the hearing. The other Committee members did not at any time, before or after the Committee recommended that this Applicant be denied admission, confront, interrogate, or in any way examine him.

II

The rationale behind the Committee's adverse recommendation, it seems fair to state, in the Applicant's "association" with Morris Bogdanow, who, according to the Committee report, ". . . is generally considere- to be a member of the communist party. At least, he is referred to as a communist openingly (sic) and in publications." Lack of any explicit definition of "association" respecting ascertainable criteria as to its scope, degree, or purpose, augments the flagrantly hearsay testimony in this report in an effort to deprive this applicant of present, and possibly all future, opportunity to practice before the Federal Courts. It is submitted that this procedure is in direct and irreconcilable contradiction to the traditional concept of "due process" as expressed in the Fifth and Fourteenth Amendments to the United States Constitution.

[fol. 11] Immediately preceding the Committee's conclusion that it is "not favorably impressed with this appli-

cant," and inferentially causing such appraisal, are the following three quoted statements:

(a) "The applicant denied being a communist. Asked whether his employer, Mr. Bogdanow, was a communist, the applicant replied: 'I don't know.'" Express denial of this reply is hereby made. Applicant recalls without any doubt that his reply to such question was, "Not as far as I know." Such reply is still wholly applicable and honest at this time.

(b) "The applicant was born and raised in New York and came to Houston only a few years ago." This is quite true, and incontestable. Applicant was totally unable at the time to select the location of his birth. It is submitted as obvious that such an intimation of unreasonable prejudice, however attenuated, adversely affected the Committee's determination of this Applicant's application for admission to practice before this Court.

(c) "We are not sure we can believe his statement that he does not know Mr. Bogdanow's communistic views, since they are a matter of common knowledge to the Bar and to the newspapers."

It seems appropriate to indicate here that to be acquainted with one's "communistic" (or, perhaps more accurately, unorthodox) views is not identical to knowing that the individual is a member of the Communist Party. An alleged newspaper accusation that one is a "Communist" is rarely [fol. 12] in accordance with, or the result of, the "due process" requirements of fair play, adequate hearing, and an impartial decision. The "due process" clause requires at least that every man shall have his day in Court and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property, and immunities under the general rules which govern society.

IV

Applicant asserts that the Committee procedure in this instance was highly arbitrary and capricious, motivated by prejudice and reliance on wholly inadmissible evidence,

that the adverse recommendation should be disregarded, and he should be admitted to practice before this United States District Court.

Wherefore, Applicant, Ben G. Levy respectfully prays that all and singular his objections to the report of the Committee on Admissions be sustained by this Court, and that the special findings to which this Applicant has objected be, to the extent deemed by this Court right and proper, set aside and disapproved, and that this Court will by further order admit to practice said Applicant before the United States District Court for the Southern District of Texas.

Dated November 17, 1953.

Respectfully submitted,

(S.) Ben G. Levy, Attorney at Law.

901 Scanlan Building, Houston 2, Texas.
[fol. 13] CA-9608.

Applicant requests, if it please the Court, that his Hearing be held in Chambers.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

In The Matter of Application of Ben G. Levy for Admission to The Bar of This Court

Transcript of Proceedings

Judge Kennerly:

The matter for this afternoon is that Mr. Ben G. Levy filed his application for admission to this Bar, and it was referred to the Bar Committee, and we have a report dated September 28, 1953, from that Committee.

I am informed, Mr. Levy, that under the rules the report of the Committee was regarded in the nature of a report from a Master in Chancery.

As I understood the rules, Mr. Levy had two courses open to him. On was to re-submit the matter to the Bar Committee for any further evidence that he thought ought to be

taken, and the other was to except to the report as made. He has chosen, as I understand him, to except to the report, and we are here to hear you now, Mr. Levy, on your exceptions. Do you still want to pursue that course?

[fol. 14] Mr. Levy: Yes, Your Honor.

Judge Kennerly:

All right. You may proceed.

STATEMENT OF MR. LEVY

Mr. Levy: Thank you. I should like to express my appreciation for the opportunity to appear before Your Honor.

The question of whether I should risk my professional reputation in defense of what I believe to be a principle is indeed a moral question, but it is also a political one. I believe no resource is of greater value than the American tradition of freedom and due process. But to create an awareness that this tradition is in danger, and I believe it is, the Representative Man, in Emerson's phrase, must speak out. Principles do not defend themselves. They must ultimately be defended by people. I believe a time of testing is at hand, and those devoted to the Bill of Rights must ask themselves: "When, if not now?" and "Who, if not I?"

I don't believe anything could be more pertinent, in arguing against the recommendation of the Committee, than stating my biography and my political views.

First of all, I should like to state now that I am not and never have been a member of the Communist Party. I don't believe in using force and violence to overthrow the Government, or to effect social changes, and so I could never conceivably be such, a member of the Communist Party. My creed is what I conceive to be the American Creed. I believe in freedom of religion and freedom of the [fol. 15] press and freedom of thought and fre-dom of criticism and freedom of movement, and in freedom of association. I believe it is the right and duty of every citizen to work for and to expect and to obtain an increasing measure of political and economic and emotional security for all.

I am opposed to oppressive discrimination in any form. I am opposed to the arbitrary and unwarranted use of

power and authority, from whatever source, and against any individual or group. I believe in Government by law, not my men, and that the law is above any man, and not any man above the law.

I believe these principles are sacred. I regard them as the basic fabric of American life, and I believe in them as living realities, not just as words on paper.

That is my creed. Those are the principles that guide me. Together, those are the principles that I have been prepared in the past to fight for, and am prepared at any time to defend, with my life if necessary.

I served in the Second World War. I joined voluntarily when I was 17, and after the war was over I was discharged. I was given an honorable discharge.

It is true, as Mr. McCorquodale has pointed out in his report, that I was born and raised in New York City. I received my education at the College of the City of New York, got my Bachelor of Science degree there. I had to work for my education. I worked during the summers; I worked part-time towards the goal of becoming an attorney. [fol. 16] I came to Texas only for climatic and economic reasons, the beckoning of warmer weather and what I felt to be greater economic opportunity. I got my law degree from the South Texas School of Law. I had to work in order to make my way through. I also went under the G. I. Bill of Rights. I took my Texas State Bar exam in October of 1952. I quit my job where I was working at Foley's about a month or so in advance to study for the Bar exam.

I was looking for a job for several months. I applied at all the large law firms that I know of, and several small ones and individual practitioners. Including Fulbright, Crooker. I applied for a job at several oil companies, and several insurance companies.

I never asked any prospective employer what his political or religious beliefs were. I didn't consider it in my province to questi-n any employer as to what his political or religious beliefs are. I would consider it, if I were an employer, highly presumptuous of anyone coming to me for a job to ask me what I think about certain issues.

My bank account at the time had reached a low two figure mark, and was rapidly approaching extinction. Out of

desperation, I took a job in an office on the north side in Houston here, in partnership with someone who was then in the Federal Government, and wanted me to—well, I felt more or less like a watchman there. In the two and half months that I was working in this office, I made a total of approximately, a gross of approximately 48 dollars. And, as I say, my financial situation was getting desperate.

[fol. 17] I heard, via the grapevine, that among others Mr. Bogdanow had a position open. I went to apply to Mr. Bogdanow, and to the others. I didn't ask him his political beliefs, what his political beliefs were; I didn't ask him what his religious beliefs were. I was looking for a job. He offered me a position at 25 dollars a week, which isn't sumptuous, but it is better than what I had, and it kept me from starving. I took that job, and I was grateful to him for offering it to me.

I don't think I have to point out that I am not permanently obligated to Mr. Bogdanow. I am not married to him. If any of the members of the Committee were to offer me a better job, I would take it without asking them what their political or religious beliefs were. I dare say that no young attorney looking for a position would be so presumptuous as to ask any prospective employer what his beliefs were.

If the Court please, I should like to make reference to my notes.

I would classify my own political views as liberal, for which I make no apologies. I happen to be, as perhaps distinguished from the Chairman of the Committee, an admirer of Franklin Roosevelt. I voted for Harry Truman, and for Adlai Stevenson in the last campaign. I believe that liberalism is, to use the memerable words of Justice Holmes: "The belief in the free trade of ideas, that the test of truth is the power of thought to get itself accepted in the competition of the market place."

Liberalism, as I believe, conceives of life, not in terms of bare survival or peace at any price, but in the light of ideals [fol. 18] upon which he is prepared to stake everything. Among these ideals are the strategic freedoms of the liberal American tradition, which make the continued use of intelligence possible. I believe that liberalism must defend

the free market in ideas against those spokesmen of the status quo who would freeze the existing inequalities of opportunity and economic power by choking off the criticism. By labeling all progressive ideas as Communistic, these spokesmen help the Communist strategy. If this reactionary movement gains momentum, it will petrify the status quo and destroy the possibilities of peaceful, social change.

Now, in my capacity of employee of Mr. Bogdanow, I have had to represent men in the Corporation Court for traffic tickets; I have had to file petitions in the District Court; I have had to do any number of routine jobs. Mr. Bogdanow never asked me to join in a conspiracy to transmit information to the Soviet Union. He never asked me to bomb any Government buildings. I did nothing but routine tasks, and that was the only scope of our association. If I am offered a better job, I have no ties with Mr. Bogdanow. I have had political discussions with him. Surely his views are unorthodox; I am aware of that. His views are not Communistic. I have heard him criticize not only the American Government in certain policies, I have heard him criticize the Soviet Government as much as anyone else has criticized the Soviet Government. I understood that he had represented Communists before this Court, and I have a high personal regard for him for so doing, because in these days of a lot of the lawyers are too afraid to risk their personal and professional reputation to do so, and I thank God we have men in this country today in our profession that have the courage to so represent these people. I [fol. 19] believe that the Canon of Ethics, which states that a man, any man is entitled to representation, means what it says. A man who represents a murderer or a rapist does not thereby approve or condone the murder or rape. But he does believe that any man is entitled to representation, as the Canon of Ethics, as I was taught them in law school, preaches.

If the Court please, I should like to read a quotation from Judge Learned Hand that was published by the Emergency Civil Liberties Committee, from a speech which he delivered before the University of the State of New York on October 24, 1952. It is a rather short excerpt, but I think it ex-

presses in words far more eloquent than I could utter exactly what I believe.

It doesn't so please the Court?

Judge Kennerly: Go ahead.

Mr. Levy: It reads as follows:

"Our nation is embarked upon a venture, as yet unproven; we have set out hopes upon a community in which men shall be given unchecked control of their own lives. That community is in peril; it is invaded from within, it is threatened from without, it faces a test which it may fail to pass. The choice is ours whether, when we hear the pipes of Pan, we shall stampede like a frightened flock, forgetting all those professions on which we have claimed to rest our polity. God knows, there is risk in refusing to act till the facts are all in; but is there not greater risk in [fol. 20] abandoning the conditions of all rational inquiring? Risk for risk, for myself I had rather take my chance that some traitors will escape detection than spread abroad a spirit of general suspicion and distrust, which accepts rumor and gossip in place of undismayed and unintimidated inquiry. I believe that that community is already in process of dissolution where each man begins to eye his neighbor as a possible enemy, where non-conformity with the accepted creed, political as well as religious, is a mark of disaffection; where denunciation, without specification or backing, takes the place of evidence; where orthodoxy chokes freedom of dissent; where faith in the eventual supremacy of reason has become so timid that we dare not enter our convictions in the open lists to win or lose. Such fears as these are a solvent which can eat out the cement that binds the stones together; they may in the end subject us to a despotism as evil as any that we dread; and they can be allayed only in so far as we refuse to proceed on suspicion, and trust one another until we have tangible ground for misgiving. The mutual confidence on which all else depends can be maintained only by an open mind and a grave reliance upon free discussion. I do not say that these will suffice; who knows but we may be on a slope which leads down to aboriginal savagery. But of this I am sure: If we are to escape, we must not yield a foot upon demanding a fair field, and an honest race, to all ideas.

'Blame not before thou hast examined; understand first and then rebuke. Answer not before thou hast heard; interrupt not in the midst of speech.' Those words were written nearly 2000 years ago; they came out of an experience already long, and refined in the fires of passion and conflict; they are the product of a wisdom, bought by ages of bitter trial; and by that wisdom alone shall we be saved, we, who [fol. 21] boast ourselves to be the apostiles of a faith in the eventual triumph of Wisdom."

I believe that the Committee, as represent*at*ed by Mr. McCorquodale, has not shown any evidence that it can distinguish between social reform and Communism, between heresay and a conspiracy. I believe that not only for myself, but I believe I am representing what I consider to be an important principle here, of variation from the orthodox point of view. I don't believe my views, my opini-ns are orthodox, but that does not make me ipso facto, and I am not, a Communist.

If the Court please, I have just one more quotation to read, from Justice Douglas of the Supreme Court. This article is also published by the Emergency Civil Liberties Committee, and entitled "The Black Silence of Fear." Justice Douglas says as follows:

"There is an ominous trend in this nation. We are developing tolerance only for the orthodox point of view on world aff*ia*rs, intolerance for new or different approaches. Orthodoxy normally has sto-d in the path of change. Orthodoxy was always the stronghold of the status quo, the enemy of new ideas—at least new ideas that were disturbing. He who was wedded to the orthodox view was isolated from the challenge of new facts.

"The democratic way of life rejects standardized thought. It rejects orthodoxy. It wants the fullest and freest discussion, within peaceful limits, of all public issues. It encourages constant search for truth at the periphery of knowledge.

[fol. 22] "We as a people have probably never lived up to that standard in any of our communities. But it has been an ideal toward which most of our communities have strived. We have over the years swung from tolerance to intolerance and back again. There have been eras of in-

tolerance when the views of minorities have been suppressed. But there probably has not been a period of greater intolerance than we witness today.

"To understand this, I think one has to leave the country, go into the back regions of the world, lose himself there, and become absorbed in the problems of peoples of different civilizations. When he returns to America after a few months he probably will be shocked. He will be shocked not at the intentions or purposes or ideals of the American people. He will be shocked at the arrogance and intolerance of great segments of the American press, at the arrogance and intolerance of many leaders in public office, at the arrogance and intolerance reflected in many of our attitudes toward Asia. He will find that thought is being standardized, that the permissible area for calm discussion is being narrowed, that the range of ideas is being limited, that many minds are closed to the receipt of any ideas from Asia.

"This is alarming to one who loves his country. It means that the philosophy of strength through free speech is being forsaken for the philosophy of fear through repression.

. . .

"Fear has many manifestations. The Communist threat inside the country has been magnified and exalted far beyond its realities. Irresponsible talk by irresponsible people has fanned the flames of fear. Accusations have been [fol. 23] loosely made. Character assassinations have become common. Suspicion has taken the place of good-will. Once we could debate with impunity along a wide range of inquiry. Once we could safely explore to the edges of a problem, challenge orthodoxy without qualms, and run the gamut of ideas in search of solutions to perplexing problems. Once we had confidence in each other. Now there is suspicion. Innocent acts become telltale marks of disloyalty. The coincidence that an idea parallels Soviet Russia's policy for a moment of time settles an aura of suspicion around a person.

"Suspicion grows until only the orthodox idea is the safe one. Suspicion grows until only the person who loudly proclaims that orthodox view, or who, once having been a Communist, has been converted, is trustworthy. Competition for embracing the new orthodoxy increases. Those

who are unorthodox are suspect. Everyone who does not follow the military policymakers is suspect. Everyone who voices opposition to the trend away from diplomacy and away from political tactica takes a chance. Some who are opposed are indeed 'subversive.' Therefore, the thundering edict commands that all who are opposed are 'subversive.' Fear is fanned to a fury. Good and honest men are pilloried. Character is assassinated. Fear runs rampant.

"Fear even strikes at lawyers and the bar. Those accused of illegal Communist activity—all presumed innocent, of course, until found guilty—have difficulty getting reputable lawyers to defend them. Lawyers have talked with me about it. Many are worried. Some could not volunteer their services, for if they did they would lose clients and their firms would suffer. Others could not volunteer [fol. 24] because if they did they would be dubbed 'subversive' by their community and put in the same category as those they would defend. This is a dark tragedy.

"Fear has driven more and more men and women in all walks of life either to silence or to the folds of the orthodox. Fear has mounted—fear of losing one's job, fear of being investigated, fear of being pilloried. This fear has stereotyped our thinking, narrowed the range of free public discussion, and driven many thoughtful people to despair. This fear has even entered universities, great citadels of our spiritual strength, and corrupted them. We have the spectacle of university officials lending themselves to one of the worst witch hunts we have seen since early days.

"This fear has affected the youngsters. Youth has played a very important role in our national affairs. It has usually been the oncoming generation—full of enthusiasm, full of idealism, full of energy—that has challenged its elders and the status quo. It is from this young group that the country has received much of its moral power. They have always been prone to question the stewardship of their fathers, to doubt the wisdom of traditional practices, to explode cliches, to quarrel with the management of public affairs.

"Youth—like the opposition party in a parliamentary system—has served a powerful role. It has cast doubts on our policies, challenged our inarticulate major premises, put the

light on our prejudices, and exposed our inconsistences. Youth has made each generation indulge in self-examination. [fol. 25] "But a great change has taken place. Youth is still rebellious; but it is largely holding its tongue. There is the fear of being labeled a 'subversive' if one departs from the orthodox party line. That charge—if leveled against a young man or young woman—may have profound effects. It may ruin a youngster's business or professional career. No one wants a Communist in his organization nor anyone who is suspect.

"And so the lips of the younger generation have become more and more sealed. Repression of ideas has taken the place of debate. There may not be a swelling crowd of converts to the orthodox, military view. But the voice of the opposition is more and more stilled, and youth, the mainstay in early days of the revolt against orthodoxy, is largely immobilized.

"This pattern of orthodoxy that is shaping our thinking has dangerous implications. No one man, no one group can have the answer to the many perplexing problems that today confront the management of world affairs. The scene is a troubled and complicated one. The problems require the pooling of many ideas, the exposure of different points of view, the hammering out in public discussions of the pros and cons of this policy or of that. . . .

"The great danger of this period is not inflation, nor the national debt nor atomic warfare. The great, the critical danger is that we will so limit or narrow the range of permissible discussion and permissible thought that we will become victims of the orthodox school. If we do, we will lose flexibility. We will lose the capacity for expert management. We will then become wedded to a few techniques, to a few devices. They will define our policy and at the same [fol. 26] time our ability to alter or modify it. Once we narrow the range of thought or discussion, we will become like the man on the toboggan who can ride it but who can neither steer it nor stop it.

"The mind of man must always be free. The strong society is one that sanctions and encourages freedom of thought and expression. When there is that freedom, a nation has resiliency and adaptability. When freedom of ex-

pression is supreme, a nation will keep its balance and stability.

"Our real power is our spiritual strength, and that spiritual strength stems from our civil liberties. If we are true to our traditions, if we are tolerant of a whole market place of ideas, we will always be strong. Our weakness grows when we become intolerant of opposing ideas, depart from our standards of civil liberties and borrow the policeman's philosophy from the enemy we detest.

"That has been the direction of our drift. It is dangerous to the morale of our people; it is destructive of the influence and prestige of our country. We have lost much of our resiliency, much of our inventive genius. The demands of orthodoxy already have begun to sap our strength —and to deprive us of power. One sees it from far-off Asia. From Asia one sees an America that is losing its humanity, its idealism, and its Christian character. From Asia one sees an America that is strong and rich and powerful, and yet crippled and ineffective because of its limited vision.

"When we view this problem full face we are following the American tradition. The times demand a renaissance in [fol. 27] freedom of thought and freedom of expression, a renaissance that will end the orthodoxy that threatens to devitalize us."

Your Honors, I am hereby waiving all immunities in requesting that I be placed under oath to answer any relevant questions that deal with my political views or my past or present record.

Judge Kennerly: I think, Counsel, that we indicated at the beginning of the hearing that any evidence would properly be only before the Committee, and since you have chosen the other course, of excepting to the report, why, we are not confined to listen to evidence in the case. The evidence is to be taken by the Committee.

Mr. Levy: Yes, Your Honor.

Judge Kennerly: But we, of course, are glad to have your statement and your views about these matters.

Mr. Levy: I would like to add one more thing, Your Honor:

As I stated in my exceptions to the Committee report, the only hearing I had before the Committee was before

Mr. McCorquodale as the Chairman of that Committee. I don't believe that the Committee can properly stigmatize an applicant without sitting as a group to question him, to investigate any matters it wishes to. I don't believe one man on that Committee should have that power, and neither [fol. 28] before nor after the Committee recommended against my application did the other members of the Committee question me, at no time, despite my offer to volunteer to come before the Committee.

I believe I have completed my argument, Your Honor.

Judge Kennerly: All right.

TESTIMONY OF MR. LEVY

Questions by Judge Hannay:

Q. Mr. Levy—is that the correct pronunciation?

A. Yes, sir.

Q. What fraternal, religious or political groups are you a member of at this time, or have you been in the past?

A. I go to—I happen to be Jewish, and I go to Temple Emanu El, and I also go to a Unitarian Church here in town.

Q. Are you a member of either of them, or just an attendant?

A. Well, I have offered to—I don't think—I am not a member of either. I have recently, and in no respects connected with this matter, I am a member of the Emerson Club of the Unitarian Church, and I have recently pledged to devote a portion of my monthly income to the support of the Church. I believe that may possibly make me a member.

Q. Which church

A. The Unitarian Church. However, I also go to the Temple Emanu El.

Q. I see. And what about the political? You quoted from some Civil Rights literature; do you have some membership in some Civil Rights group?

[fol. 29] A. No, sir. But I have attended some meetings of the Young Democrats of Harris County, and I did work for Adlai Stevenson in the last campaign, at the Stevenson headquarters.

Q. Those are the only organizations that you are a member of, or have been, that you recall?

A. Well, I belong also to—I am not sure it is relevant, that you may want this much, but I also belong to the Young Adult Professional Club at the Y here in town, and also to an Adult group of the Jewish Community Center.

Q. Is that all?

A. Yes, sir.

Q. What Magazines or publications do you subscribe to or regularly read, or have you subscribed to for awhile previously?

A. I read the Nation magazine, as well as Time, Life and Look. But I do consider my political views to be more similar to those expressed in the Nation than in any of the Luce publications.

Q. Were you living in New York during the trial of the so-called "Eleven Communists" or were you in the service at that time?

A. I was in the service during the Second World War, but I was—I don't recall whether or not—I left New York in 1948, I believe, and came back there during the summers to visit my family. I believe I may have been in New York during some part of the Communist trial. I never had occasion, however, to witness it.

Q. You didn't attend or have any connection with it?

A. No, sir.

Q. Politically?

[fol. 30] A. No, sir. I did, however, want to see the trial, but I never had occasion to see it.

Q. Did you have any connection with the recent Rosenberg trial, writing letters or anything along that line?

A. Yes, sir, I wrote a letter to President Eisenhower. I expressed my view, and I still believe I am correct, that the death penalty was unprecedented an- unjustified, and he should exercise clemency in commuting their sentence.

Judge Hannay: I believe that is all I care to ask.

Questions by Judge Connally:

Q. You have referred a couple of times to the Emergency Civil Rights Committee. What is that, Mr. Levy?

A. As far as I know, Your Honor, it is a group that is probably connected with the Civil Liberties Union, of which Roger Baldwin used to be Chairman. The present Chair-

man of this Committee is Paul Lehmann, who is a professor of applied Christianity at Princeton Theological Seminary.

Q. Are you affiliated with that Organization in any way?

A. No, sir, other than—I have no affiliation, just that I am interested in their publications.

Q. You volunteered awhile ago that you had supported, whom you had supported in the last presidential election. Whom did you vote for in '48?

A. I wasn't able to vote in '48. However, if I were—well, yes, I was. I voted for Truman.

Q. You told us, or rather you seemed to support these statements that you read to us from quotations from Mr. [fol. 31] Justice Douglas and Judge Hand. In Judge Douglas' article, there were repeated references to the right to think being hampered. I wonder if you would care to expand a little bit as to just what your thinking is along that line. In what particulars is liberal thinking being hampered or hindered? In what instances are liberal thinkers not being permitted to express themselves? Can you give me an illustration or go a little further as to just what you refer to as these great dangers facing us at the present, what you had in mind?

A. Yes, Your Honor. I had in mind—well, I think perhaps the best illustration of it is what is happening right now to me. Because I happen to be associated with a man who, according to the newspapers, allegedly may have been —I don't know whether he has been; I assume he may have been—has been called a Communist, anyone who associates with him, perhaps anyone who belongs to the same musical society he belongs to, is suspect, is afraid to open his mouth and speak out against the prevailing point of view, is afraid of being labeled subversive or disloyal by uttering any points of view that are critical of current specific American policies. That is what I meant, that there is a fear of being labeled, of being stigmatized; and I have that fear at the present time.

Q. Has your right to speak freely in any wise been infringed here today? Were you deprived of telling us anything you wanted to about this matter?

A. No, sir. I did not intent, Your Honor, to imply that my right to speak is being limited by legal means at all.

I mean my right, or rather—yes, I believe my right to speak is being hampered by the fear of being stigmatized in the press for upholding or adhering to an unpopular viewpoint. [fol. 32] The fear of associating with someone, in whatever capacity for whatever purpose, with someone who already has been subject to some rumor or gossip in the community for his unpopular points of view. In that sense, I believe the right of free and unhampered discussion is being restricted.

Q. You started off by telling us in general that you believe in the Bill of Rights and in the American Creed, and you were opposed to all evil, and then you told us later that you entertained views that generally were somewhat unorthodox, if I understood you. Where are your views unorthodox, or what is it about your beliefs that you characterize them as unorthodox?

A. I believe my characterization of my views as unorthodox would have special reference to this community. I believe, for example——

Q. Houston?

A. Yes, sir.

Q. What's unorthodox about Houston?

A. Well, I believe that negroes and Latin-Americans and members of all minority groups should not be segregated from other groups. I believe that these people have a right to equality of opportunity and employment. I believe that even Communists, no matter how much we despise their point of view, should have a right to say what they can, what they do, just as long as there is freedom for reason, for another point of view to combat what the Communists say. I believe that is the test of a true liberal, and I believe further that there is a substantial difference between what you might call a heretic as regards the orthodox political point of view and a conspirator who wants to overthrow the freedom of discussion and freedom of ideas that presently exists in this country.

[fol. 33] Furthermore, my views are somewhat unorthodox in that, as I say, I believed in the New Deal as Franklin Roosevelt expressed it.

Q. A lot of people have felt that way. I wouldn't call that unorthodox.

A. Well, Your Honor, apparently the prevailig opinion down here is conservative Republican, in that respect. I believe that——

Questions by Judge Hannay:

Q. If I recall right, you carried the state all four times you ran, didn't you?

A. Well, Your Honor, at the present time I believe the state went, and the Houston community, went over-whelmingly Republican, did it not?

Judge Hannay: Well, some precincts went overwhelmingly for Eisenhower. But go ahead, we won't argue about that. Go ahead, Judge. Excuse me.

Judge Connally: That's all right.

Questions by Judge Connally:

Q. I have one more thing I would like to ask you, Mr. Levy, as a lawyer. You told us that in your letter to the President, you thought you expressed the view that the death penalty in the Rosenberg case was far disproportionate to the offense, or something of that sort. Does that fairly accurately state your view on it?

A. Yes, sir, that does.

Q. Are you fundamentally opposed to capital punishment as such, or do you believe it has a place in our legal [fol. 34] order, but it just wasn't appropriate in that case?

A. Well, Your Honor, I believe I am, in point No. 1, opposed to capital punishment. In the first place, I believe that the criminal procedure as it presently exists, does not make sufficient allowance for the rehabilitation of prisoners. I don't believe that there is a sufficient effort made towards the re-education of a man who has been convicted of a crime, to socially re-orient him into constructive channels.

But in addition to that, I believe in that case it was especially inappropriate, for the following reasons—and I am painfully aware that my views on this subject are probably identical with the majority of Communists; nevertheless, it is not because it is the Communist point of view that I am upholding it, it is because it is mine:

I believe that the sentence was unprecedented for the first

reason that, as Justice Black pointed out, the Supreme Court never once had a chance to review the record in that case, never once had a chance to affirm the fairness of the trial. The record was never reviewed by the Supreme Court.

No. 2——

Q. Let me interrupt you just a moment. Do you feel that in every case in which the death sentence is imposed, we ought to change our system so that the Supreme Court must review the record? You know, of course, that it is rather seldom that they do.

A. Your Honor, I believe that when a human life is at stake, the Supreme Court should review the record to decide upon the fairness of the trial. I think it should be a mandatory procedure.

[fol. 35] Q. That is a rather drastic change you advocate in our present system, isn't it?

A. I suppose it is, Your Honor. But I believe that a human being should, before his life is taken away from him, he should be entitled to all the protections that the law could possibly give him.

Q. All right. Go on; tell me your other—from where I interrupted you.

A. Well——

Q. You were telling me that there were ce-tain circumstances about that trial where you thought the death sentence was particularly inappropriate. One was that the Supreme Court had never reviewed the record.

A. Yes, sir.

Q. Anything else?

A. Yes, sir. Your Honor, I would like to point out again that I am very cognizant that the views I am going to express are extremely unpopular, and may be subject to gross misinterpretation if they are reported in the newspapers. If it please the Court, I don't know if I am within my rights, but I should like to ask that representatives of the newspapers be directed, if not excluded, at least be directed not to report the following testimony.

Q. But, of course, this isn't testimony, you——

A. Or rather the following argument.

Q. You more or less invited questions, and you are not under oath. You are not telling us any facts about this matter; you are simply making a statement, as a member of the

Bar, or rather as an applicant for membership in the Bar here, and I thought your ideas and feelings and all were relevant to the matter here. Wouldn't you say so?

A. I think so.

[fol. 36] Q. I am inclined to think that it is an open hearing, Counsel and that if you don't care to pursue that line of questioning, I will be glad to abandon it.

A. Well, Your Honor, if you consider it relevant, I am willing to discuss them, but I do not wish to risk having my reputation damaged by any——

Q. Let me ask you just one more question. You have told us that in this Rosenberg case you wrote this letter for two reasons, if I understand you, first, because you are opposed to capital punishment, and in the second place, in that the Supreme Court had never examined the record. Have you ever written any similar letters about any other capital cases, suggesting clemency to the Governor of the state or to the President?

A. I did many years ago, Your Honor, when—I think it was before I even got into law school, when I heard about several negroes being sentenced to death in some southern state.

Q. The Scottsboro case, I suspect?

A. I don't recall the exact case. I think it may have been, but I think it might have been later than that. I don't recall exactly what case it was.

Q. I see. Are those the only two instances of that nature that you recall?

A. Yes, sir, I believe so.

Q. In writing the letter in the Rosenberg case, did you do so on your own initiative, or was it suggested to you by someone else, Mr. Levy?

A. No, sir, it was on my own initiative, because I—in the first place that, to be perfectly honest about it, Your Honor, the fact that they continued to maintain that they were innocent until the very minute before they were to be electrocuted, despite the fact that the government offered to save [fol. 37] their lives if they would admit their guilt, raised a doubt in mind as to whether or not they were in fact guilty.

Q. I see. Did you read the record in that case?

A. No, sir. I did, however, read extracts from the trial.

Q. That convinced you that there was serious question about their guilt or innocence?

A. It convinced me, one, that the Judge——

Judge Hannay: Judge Kaufman?

Mr. Levy: Yes, sir.—may possibly have been prejudiced in that case.

Q. I see. What is it that lead you to believe he was prejudiced against them, if you recall?

A. The remark, Your Honor, that comes to mind immediately, that he believes that they are responsible for, at least in large part, for the Korean war and the subsequent death of thousands of American soldiers. Anyone who believed that during the trial was bound to be prejudiced against the defendants.

Judge Kennerly: Will you repeat that? I didn't catch that.

Mr. Levy: If I remember correctly, Judge Kaufman said, was reported to have said that he believed the Rosenbergs were responsible, in large measure, for the Korean war and the death of thousands of American boys.

[fol. 38] Judge Hannay: But that was afterward. That was after the verdict of the jury, and it was also after he had spent many, many hours in the synagogue on his knees, asking divine guidance. Do you believe in Divine guidance?

Mr. Levy: I do, sir, in times of stress and doubt.

By Judge Connally:

Q. Are you familiar with the trial Judge Medina held up there in New York some five years ago?

A. Yes.

Q. Did you keep up with that very carefully?

A. Not very carefully, Your Honor. I am somewhat familiar with it.

Q. Do you entertain the thought that he was perhaps in any wise prejudiced against those people that were on trial there?

A. Your Honor, if he were prejudiced, he may have been provoked by the action of the Counsel. I am not—I don't remember reading any evidence to indicate that he was unduly prejudiced against them.

Q. You think they got a fair trial, then, eh?

A. I believe—as far as I know, Your Honor, and as far as any Communist can get a fair trial today, I believe they did get a fair trial. But it seems rather apparent to me that any person serving on a jury would be bound to have some prejudice against a Communist, and it would be extremely difficult to find—well, I suppose there may be a good deal of truth in that, depending on what you mean by prejudice.

Q. If you define a Communist as a person who advocates the overthrow of our form of Government by force or [fol. 39] violence, I suspect you would find a great many of us that would entertain some prejudice against them, just like we have a prejudice against murderers or others who commit offenses. I have never known that that prejudiced people who were charged with crimes from getting a fair trial. Do you think Communists are treated different from others who commit offenses against the government, Mr. Levy?

A. I don't believe that it is—well, Your Honor, exactly what do you mean when you say that they are treated differently?

Q. Well, as I understood you, you said that you considered it impossible for a Communist to get a fair trial.

A. Well, Your Honor, I didn't mean to say that——

Q. I may have misunderstood you, or may not have interpreted it right.

A. I meant to say it is highly unlikely that a Communist would get a fair trial in the sense that a jury would be picked that would examine only the evidence produced during that trial, and not preconceptions toward Communists. In that sense, I believe it is very difficult for a Communist to get a fair trial.

Q. My point was that we have a great many offenses for which people are put on trial here, crimes of violence and so forth. Do you think that a man charged with undertaking to overthrow the Government by force and violence doesn't get as fair a trial as one charged with murder?

A. Your Honor, it is not so much the crime that is committed as the way it is publicized. If, for months on end, a particular criminal were blown up in the newspapers, radio and so forth, and shown as being—as threatening anyone's [fol. 40] personal existence, as threatening the whole social

order, I believe that he would find it very difficult to get a fair trial, as well as a Communist now finds it difficult to get a fair trial.

Q. What you are saying is that the newspapers and radio exert too much influence on the people generally, whether it is good or bad? I might not argue that proposition with you.

A. (No answer.)

Questions by Judge Hannay:

Q. With reference to your views on capital punishment, do you think you would have the same compelling urge to write to Judge Reeves, if the jury has or should today bring in a verdict of guilty and recommend the death penalty for the two murderers of the little child up there in Kansas City?

A. Your Honor, I probably would not have the same compulsion, because although these people will probably get the death penalty, it does not involve—I don't believe that involves a principle of Civil Liberties that the Rosenberg case did involve.

Q. You are not a married man, are you?

A. No, sir.

Q. You have no children?

A. No, sir. Well, I—I do believe that those people have demonstrated such anti-social tendencies that they should be kept away from society, imprisoned until they show sufficient psychological reorientation that they would not possibly commit these crimes again. But I do not believe that they should be put to death. I don't think that the deterrent effect of that punishment is as great as it is reputed to be. Those crimes keep happening time and time [fol. 41] again. I don't—and that makes me doubt the deterrent effect of such punishment.

Questions by Judge Connally:

Q. How old a man are you, Mr. Levy?

A. 26, Your Honor.

Q. Lived in New York all your life until you came down here?

A. Yes, sir.

Q. How long have you been in Texas?

A. Off and on since 1948, September.

Q. I see. You came down shortly after getting out of the service, I take it?

A. No, sir. After the service I—I got out of service in July of '46. I went back to school.

Q. In New York?

A. Yes, sir.

Q. Is that where you went to the City College and got, what was it, a B. A. degree?

A. Bachelor of Science degree.

Judge Hannay: What branch of the service were you in, Mr. Levy?

Mr. Levy: The Navy.

Judge Hannay: Excuse me, Judge.

By Judge Connally:

Q. Did you belong to any organizations there among the student body, while you were in the City College of New York?

[fol. 42] A. I belonged to the Concert Bureau, to the Government and Law Society, and I think to the F. D. R. young Democrat group.

Q. I didn't understand that last one.

A. The name it was going under at that time was The F. D. R. Young Democrats.

Q. Oh, F. D. R.; Franklin D. Roosevelt, I see.

A. Yes.

Questions by Judge Kennerly:

Q. Through what means did you learn of or meet your present employer?

A. I'm sorry, Your Honor?

Q. How did you meet your present employer?

A. I met him—I met him when I went to a concert at the Music Hall, through a girl I had been taking out at that time.

Q. Through a what?

Judge Connally: A young lady.

Q. Oh?

A. A young lady, and she introduced me to him. That was approximately—that was while I was going to law

school. I later met him when I went through the Scanlan Building looking for a job. I applied at practically every law firm in the building. I remembered him at that time, and he told me that at some time in the future he might possibly have an opening for me.

Q. Did you meet him between the time you first met him and the time you applied for employment?

A. I don't believe so, Your Honor.

Q. Did you have any communications with him?

[fol. 43] A. Not that I remember, Your Honor.

Q. What sort of a meeting was that where you met him in the Music Hall?

A. This young lady I had been going out with knew that I was going to get out of law school soon. She took me over to meet him. It was a very brief introduction. I told him I was in law school, and I was going to be graduating soon. At that time he made no mention of any employment, and I didn't think anything further would come of it, and that was the extent of my knowledge in association with him.

Questions by Judge Hannay:

Q. You say you are not a Communist, and never have been?

A. Yes, sir.

Q. And you have never voted—the only two times you have voted have been the last two?

A. That's right, Your Honor.

Q. Have you ever attended, whether you knew about it at the time or learned it afterwards, you might say a Communist meeting?

A. The only time I attended a Communist meeting was once when I was a student at CCNY. They invited, under the sponsorship of the American Youth for Democracy, they invited a speaker, I think his name was Marcantonio.

Q. The gentleman who was a member of Congress from New York at that time?

A. Yes, sir, and I was interested in seeing what he had to say, but I did not consciously at any other time attend a Communist meeting.

Q. Did he run in '48?

A. I don't remember, Your Honor.

[fol. 44] You voted in New York in '48?

A. Yes, sir. I think he may have been defeated during that election. I know he didn't represent my district at that time.

Judge Hannay: I see.

Questions by Judge Kennerly:

Q. Have you attended any such meetings in Houston?

A. No, sir. I don't know of their existence, and I certainly would not go out of my way to attend them, Your Honor.

Questions by Judge Connally:

Q. Have you made any speeches or addresses to any groups or to organizations? Do you make a habit of doing that sort of thing, Mr. Levy?

A. No, sir, I don't.

Q. Being invited, you know, to attend an organization of any kind?

A. No, I have never been invited. Occasionally at this Emerison Club of the Unitarian Church, well, we all engage in discussions, sometimes, on political subjects, and that is the extent of my——

Questions by Judge Hannay:

Q. One point, just to make sure; I have almost gotten to it, but just to make it clear: I believe one evidence of a Communist is the fact that he doesn't believe in a Supreme Being. What is your thought on that matter?

A. Well, Your Honor, I am aware that Lenin called religion the opiate of the people. But it seems to me that [fol. 45] in France, anyway, and in Italy, there are some very religious people who do happen to be Communists. I don't—Communism does, as far as I know, discourage belief in God. But I don't think necessarily a Communist has to be an atheist. Probably most of them are, but I don't think logically one would have to be.

Q. Well, I was asking about your individual beliefs, if you care to tell me, whether you did or did not believe in a Supreme Being, you yourself.

A. I believe, Your Honor, that there is, some unknown power that has created the universe. But——

Q. You don't believe——

A. I don't adhere to any orthodox religious point of view.

Q. You don't believe in any personal God?

A. Well, Your Honor, I am not sure I know exactly what you mean. If you mean——

Q. Well, just to make it as plain as I can make it, do you believe in God or don't you?

A. I believe that there is a Supreme Being, but I wouldn't venture to say what the nature of that Supreme Being is.

Questions by Judge Kennerly:

Q. Do you worship the Supreme Being, and believe in him?

A. I don't believe so. Not in any formalized manner.

Judge Kennerly: Anything further?

Judge Connally: Anything else you want to tell us, Mr. Levy?

[fol. 46] Mr. Levy: Well, Your Honnor, I can't think of any better reply to the argument that one should not associate with the unpopular than that answer which was made by one of my ancestors, a Galilean rabbi, who as you know, was recorded as having said, if I remember my Bible studies, in the Gospel of Luke, that, "I come to save those who are"—Zacchaeus was the man's name; he was a tax collector, something of a publican, or a very unpopular man, very despised in his community—and he asked Jesus, "Why do you come and seek me? Surely you must know that I"—I am paraphrasing now—"Surely you must know that I am a tax collector." And Jesus told him something to the effect that the Son of Man comes to save those who are lost.

The only way we can—inferring from that story, the only way we can beat the Communists is not with guns, but to beat their ideas with our better ideas, to save them from their own self-destruction.

Judge Kennerly: Have you finished?

Mr. Levy: Yes, Your Honor.

Judge Kennerly: The matter will be regarded as submitted. We will notify the Clerk of our decision, and the Clerk will notify you.

Mr. Levy: Thank you, Your Honor.

[fol. 47] Judge Kennerly: Court will recess under the rules.

IN UNITED STATES DISTRICT COURT

ORDER OF COURT, APPROVING BAR COMMITTEE'S REPORT AND RECOMMENDATION THAT BEN G. LEVY BE DENIED ADMISSION TO THE BAR OF THIS COURT AND SO ORDERED.—Filed November 24, 1953

Before Kennerly, Hannay, and Connally, District Judges:

Per Curiam: Local District Court Rule 5 provides for *the* regulates the Admission of Attorneys to the Bar of this Court. Ben G. Levy, who resides in Houston, in this District and Division, and who has been licensed by the Supreme Court of Texas to practice in the Texas Courts files his Application to be admitted to the Bar of this Court under such Rule.[1]

[fol. 48] Such Rule provides that when such an Application for admission to the Bar is filed, it shall be referred to the Bar Committee provided for in such Rule, and such Committee, in such manner as it may deem proper, shall make an investigation of the fitness, competency, and qualifications of the Applicant.[2]

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[1] The applicable portion of such Rule is as follows (*underscoring* ours): "Any attorney who resides in the State of Texas and who has been heretofore or may be hereafter licensed by the District or Superior Courts of the State of Texas, and is a member in good standing of the Texas State Bar, *whose private and personal character shall be unexceptional*, and who is competent to practice in this Court, may be admitted to the Bar of this Court in the manner hereinafter set fourth."

[2] The applicable portion of such Rule is as follows (underscoring ours): "For the purpose of examining into and reporting on the fitness, competency, and qualifications of all applicants for admission to the Bar of this Court, there is hereby created for each Division of the Court where the

In accordance with such Rule, Applicant's Application was referred to such Bar Committee. The Committee has investigated Applicant, and has reported, recommending that he be not admitted to the Bar of this Court.

It will be observed from such Rule that the proceedings before such Committee may be either what may be called informal, consisting of investigations and inquiries by the Committee, interviews with Applicant, etc., or may be what may be called formal with the Committee holding formal hearings, summoning witnesses, administering oaths, taking testimony, etc. The practice or procedure in the District has generally been that proceedings before such a Committee are informal. Apparently the hearing of Applicant's Application by the Committee was informal.

Complaining of the findings and conclusions of the Commi-tee, Applicant had the right to move here for a re-reference to the Committee and for a formal hearing before the Committee, or to file exceptions to the Report of the Committee as made. He has chosen the latter course, and

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Court shall deem necessary a committee of three members of the Bar of this Court, to be appointed by the Judges of this Court as a standing committee for such purpose. One member of such Committee shall be designated Chairman. When any application is filed with the Clerk, he shall, after making a record of same in a book to be kept for that purpose, immediately refer the same to the committee in charge, transmitting to the Chairman thereof the Original Application and attached Exhibits. *Such Committee, as soon as such application is referred to it, shall, in such manner, as it may deem proper, at once make an investigation of the fitness, competency, and qualifications of the applicant,* and for such purposes the committee shall have the power given a Master of this Court under Rule of Federal Procedure 53 to summon witnesses, administer oaths, and take testimony by deposition or otherwise, when in its opinion it is desirable to do so, and shall file a report in writing, showing the result of such investigation, within thirty days there-[fol. 49] after, unless the Court may extend such time for a longer period and shall with its report return to the Clerk such Original Application, Exhibits, and other papers."

filed his Exceptions to the Report, and we have accorded him thereon a full and lengthy hearing.

Whether the hearing before the Committee be informal or be formal, all applicants carry the burden of showing [fol. 50] that their private and personal characters are unexceptional, and that they are fit, competent, and qualified to practice in this Court. Applicant failed to convi-ce the Committee that he should be admitted to the Bar of this Court, and it has recommended that his Application be denied. We have examined his Application, the Committee's Report, and his Exceptions, and have given him a full hearing. We approve the Committee's Report and Recommendation that Applicant be denied admission to the Bar of this Court. It is so ordered.

However, Applicant shall have the right, at any time after the expiration of one year from this date, to again apply for admission to this Bar.

The Clerk will regard this as an Order, and will record it on the Minutes of the Court, and furnish Applicant with a copy.

Done at Houston, Texas, this November 24, 1953.

(S.) T. M. Kennerly, United States District Judge,
Allen B. Hannay, United States District Judge,
Ben C. Connally, United States District Judge.

[fols. 51-52] In United States District Court

Notice of Appeal—Filed December 3, 1953

Notice is hereby given that Ben G. Levy, Applicant above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Order approving the Bar Committee's Report and Recommendation that Ben G. Levy be denied admission at this time to the Bar of the above United States District Court, as more fully set out in said Order, and entered in this action on November 24, 1953.

Dated at Houston, Texas, this third day of December, 1953.

(S.) Ben G. Levy, Attorney at Law, 901 Scanlan Building, Houston 2, Texas, CA-9608.

Appeal Bond. Omitted in printing.

[fol. 53] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 54] In United States Court of Appeals For The Fifth Circuit

No. 14886

In the matter of: Application of Ben G. Levy for admission to practice in the U. S. District Court, Southern District of Texas.

Argument and Submission.—May 24, 1954

On this day this cause was called, and after argument by Bernard A. Golding, Esq., for applicant and Tom M. Davis, Esq., for amicus curiae, was submitted to the Court.

[fol. 55] In The United States Court of Appeals For The Fifth Circuit

No. 14886

In the matter of: Application of Ben G. Levy for admission to practice in the U. S. District Court, Southern District of Texas.

Appeal from the United States District Court for the Southern District of Texas.

Opinion.—June 23, 1954

Before Strum, Circuit Judge, and Dawkins and Hooper, District Judges.

Hooper, District Judge: Ben G. Levy, Appellant, filed application for admission to the Bar of the United States District Court, Southern District of Texas, and his application pursuant to Local Rules of Court was referred to a Bar Committee for investigation. After an informal in-[fol. 56] vestigation and upon vote of the entire Committee, an adverse recommendation was filed with the

Court. Objections to this report were filed by applicant and the matter came on to be heard before three District Court Judges, who adopted the report of the Bar Committee and refused the application. As our affirmance of such order by the District Court is predicated upon procedural grounds, no attempt will be made to discuss fully the merits or demerits of applicant's cause.

The application for admission to the Bar was filed in accordance with Rule 5(b) of the Local Rules of the District Court, which provided among other things, that any attorney residing in the State of Texas, licensed by the District and the Superior Court of said State, and a member in good standing of the Texas State Bar "whose private and personal character shall be unexceptional" and who is competent to practice in said Court, may be admitted to the Bar in the manner provided by such rule. The rule provided that the application shall be referred to the Bar Committee and such Committee "in such manner as it may deem proper, shall make an investigation of the fitness, competency and qualifications of the applicant." It was provided the Committee "shall have the power given a Master of this Court under Rule of Federal Procedure 53, to summon witnesses, etc." It appears from the record that the procedure as to this Committee in the District Court had generally been informal and so it was in this instance.

Applicant filed his objections to the foregoing adverse [fol. 57] report of the Bar Committee contending among other things, that the whole Committee was not present at the hearing thereon, that "the rationale behind the Committee's adverse recommendation, it seems fair to state, is the Applicant's 'association' with Morris Bogdanow, who, according to the Committee report, ' . . . is generally considered to be a member of the communist party.'" Further, that the Committee procedure in this instance was highly arbitrary and capricious, motivated by prejudice and reliance on wholly inadmissible evidence. Thereupon the District Court set down this matter for a hearing at which hearing the following colloquy occurred:

"Judge Kennerly: The matter for this afternoon is that Mr. Ben G. Levy filed his application for admission

to this Bar, and it was referred to the Bar Committee, and we have a report dated September 28, 1953 from that Committee.

"I am informed, Mr. Levy, that under the rules the report of the Committee was regarded in the nature of a report from a Master in Chancery.

"As I understood the rules, Mr. Levy had two courses open to him. One was to re-submit the matter to the Bar Committee for any further evidence that he thought ought to be taken, and the other was to except to the report as made. He has chosen, as I understand him, to except to [fol. 58] the report, and we are here to hear you now Mr. Levy, on your exceptions. Do you still want to pursue that course?

"Mr. Levy: Yes, Your Honor.

"Judge Kennerly: All right. You may proceed."

Applicant, thereupon, not under oath, made to the judges what might be termed a declaration as to his personal and political creed, consuming more than thirteen pages of the record, to which discourse apparently the trial judges gave patient attention. Thereupon, the following colloquy occurred:

"Judge Kennerly: I think, Counsel, that we indicated at the beginning of the hearing that any evidence would properly be only before the Committee, and since you have chosen the other course, of excepting to the report, why, we are not confined to listen to evidence in the case. The evidence is to be taken by the Committee.

"Mr. Levy: Yes, Your Honor.

"Judge Kennerly: But we, of course, are glad to have your statement and your views about these matters."

[fol. 59] Thereupon applicant made further statements and at his own suggestion he was carefully questioned by members of the Three Judge Court, during the course of which he disclosed his political affiliations, his liberal views, his fraternal, religious and political connections, and even his religious beliefs. When asked whether he believed in God he answered: "I believe that there is a Supreme Being, but I wouldn't venture to say what the nature of that Supreme Being is," that he did not worship in any formalized

manner. He described his efforts in behalf of the defendants in the Rosenberg case. He denied any communistic connections implied from his employment by a local attorney whose reputation according to the views of the Bar Committee, was communistic.

This statement by the applicant to the Court was made at a hearing held in open court. It was not under oath, and it did not alter the fact that he was then taking exception to the report of the Committee in the nature of a report of a Master in Chancery.

It is provided by law that a Master in Chancery, unless otherwise directed by the order of reference, shall file with his report a transcript of the proceedings, of the evidence, and the original exhibits. "The Court shall accept the Master's Findings of Fact unless clearly erroneous." Any party may serve written objections thereto. "The Court after hearing may adopt the report or may modify [fol. 60] it, or reject it in whole or in part, or may re-commit it for further investigation." See Rule 53(e)(1)(2), Federal Rules of Civil Procedure.

The trial judges correctly followed the above rule, gave the applicant his choice of remedies thereunder, explained to him his right to have the matter re-committed to the Bar Committee for a full hearing before all members thereof, but applicant knowingly and voluntarily declined that suggestion and saw fit to rely upon exceptions to the report. Compare *Goldsmith vs. Board of Tax Appeals*, 270 U.S., 117.

Applicant seems to take the position that he was being tried by the Bar Committee on charges preferred against him, overlooking the principle that the burden of proof was on him pursuant to the Local Rule aforesaid, to show that his private and personal character was unexceptional.

He concedes that he has no constitutional right to practice law, that that is a matter of privilege. This principle of law is so well established that it does not require discussion. See 7 C.J.S., p. 708. It is interesting to note that recently the Circuit Court of Appeals for the District of Columbia has ruled that the refusal of the District Court to grant such an application is an administrative function and it is not appealable. *Brooks vs. Laws*, 208 F. 2d 18.

The District Judges in this instance did not permanently close the doors of the court to the admission of Appellant, [fol. 61] but expressly reserved to him the right within twelve months thereafter, to renew his application. The record evidences the apparent purpose upon the part of the District Judges to deal fairly with the applicant. All presumptions of regularity must be entertained by this Court concerning the report of the Bar Committee and the order of the Judges. Applicant was expressly offered the privilege of making a record upon which he could appeal, but declined to do so.

The order of the District Court Judges denying his application is affirmed.

[fol. 62] IN UNITED STATES COURT OF APPEALS

No. 14886

In the matter of application of Ben G. Levy for admission to practice in the U. S. District Court, Southern District of Texas.

JUDGMENT—June 23, 1954

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the District Judges denying the application of Ben G. Levy for admission to practice in the said U. S. District Court be, and the same is hereby, affirmed;

It is further ordered and adjudged that the Applicant, Ben G. Levy, and the surety on his appeal bond herein Fidelity & Deposit Company of Maryland, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 63] IN UNITED STATES COURT OF APPEALS

No. 14886

In the matter of application of Ben G. Levy for admission to practice in the U. S. District Court, Southern District of Texas.

ORDER AMENDING OPINION—July 10, 1954

The opinion by this Court in the above stated case is amended by striking therefrom the following paragraph, to-wit:

This statement by the applicant to the Court was made at a hearing held in chambers at his own request, it was not under oath, and it did not alter the fact that he was then taking exception to the report of the Committee in the nature of a report of a Master in Chancery.

A new paragraph shall be inserted in lieu thereof, which shall read as follows:

This statement by the applicant to the Court was made at a hearing held in open court. It was not under oath, and it did not alter the fact that he was then taking exception to the report of the Committee in the nature of a report of a Master of Chancery.

[fol. 64] IN THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

[Title omitted.]

PETITION FOR REHEARING—Filed July 12, 1954

To The Honorable The Justices of The Circuit Court of Appeals, Fifth Circuit:

A

Petitioner is the Appellant in this cause.

B

On June 23rd, 1954, this Court affirmed the judgment of the United States District Court of the United States for the Southern District of Texas (Houston Division).

[fol. 65] C

The decision and opinion presents an interpretation and legal significance which gives rise to the belief that several portions of the record were either misunderstood or escaped the attention of this Court.

For instance, this Court states that the hearing was held *in chambers* (5); whereas, it was held *in open Court*, and newspaper reporters, as well as the general public, had full access to the courtroom.

In an unprecedented appellate procedure, this Court permitted adverse counsel to read and quote, dehors the Record, in open Court, from a previous edition of "LIFE" Magazine for the purpose of attempting to show that Petitioner indulged in unorthodox thinking.

Further, the Court completely bypassed the constitutional issues presented; selected a few passages bearing upon his political and religious views from the Record to buttress its decision, although the whole Record abundantly established that Petitioner had sustained the burden of proving requisite character and fitness for admission to the Bar and his ability to take the oath of one of its members. If the limitations imposed upon Petitioner become the law of this land, it is not idle to predict that we must be prepared to lose the Cokes, the Jeffersons, the Cardozos, the Holmeses and others who were, in their day, considered unorthodox.

D

The decision constitutes a departure from a well-settled course of opinions from the Supreme Court, notably *In Re Summers*, 325 U.S. 561; *Garner* v. *Board of Public Works*, 341 U.S. 716; *Wieman* v. *Updegraff*, 344 U.S. 183; and [fol. 66] *Application of Charles J. Steinbugler*, 297 N.Y. 713, 77 N.E. 2d 16, wherein the New York Court of Appeals held that a claim of exemption from military service upon conscientious and lawful grounds, without proof of insin-

cerity or disloyalty, was *not* evidence bearing on an applicant's character or fitness for admission to the Bar.

In the instant case, Petitioner, despite evidence that he was qualified to be admitted and to take the oath, was denied admission solely because of unorthodox opinions on philosophical and political matters. To be specific, (5) the fact that Petitioner "did not worship in any formalized manner," and expressed an opinion "in behalf of the Defendants in the ROSENBERG Case," (in which, at least, one Justice of the United States Supreme Court concurred, as well as the Pope in Rome) was unduly emphasized and his constitutional right to intellectual independence grossly deemphasized.

This Court states (5-6), quoting Rule 53 (E) (1)(2), F. R. C. P. that "The (District) Court *after hearing* may adopt the report or may modify it, or reject it in whole or in part, *or may re-commit it for further investigation.*" Thus, if the District Judges regarded the evidence before them as insufficient, they had *full authority* under this Rule, *on their own motion*, to re-commit the Report to the Bar Committee after the hearing granted Petitioner. Since they did not do so, it is fair to infer that they did not consider the prior proceedings to be defective, but rather that they, purely by implication, adopted the Bar Committee's view of the *merits* of the case. The issues in this cause are so far-reaching and basic that Petitioner respectfully requests this Court also to evaluate the case *on its merits*, expressly.

This Court held, in substance, that although Petitioner [fol. 67] had two alternatives open to him, both expressly allowed by the Rules (3), he is to be penalized for electing the one rather than the other.

If the Bar Committee thought it did not have enough factual data before it to decide competently on Petitioner's application, it would never have taken the grave action it did in recommending rejection of his application on such religious and political grounds. It is not difficult to understand why Petitioner, after this autocratic treatment, confronted with the alternative to appeal the question to this Court, chose not to re-submit his application to the Committee.

These fundamental questions are of such vital importance

to the administration of Federal Law and the role of Court and Legislature in governing admission to practice law as well as protection of intellectual differences peculiarly needed in the Bar, as to warrant allowance of this Petition and reversal of this cause.

If what this Court has written in this cause be the law, then it is clear that further encroachment upon the liberties of individuals will be encouraged and the possibility of securing redress from officialdom unchanged will be delimited and negatived.

It is submitted that the threat to the individual liberty concealed in this decision should not be minimized, particularly, not in times when reasons for disregarding such guaranteed liberties vouchsafed by the First and Fifth Amendments, United States Constitution, by certain cliques and factions, are fomented.

This decision is one in which there is involved questions of utmost and outstanding importance.

[fol. 68] The bitter cry for justice on the part of those denied the right to intellectual independence throughout the ages ought not to be ignored.

Petitioner prays this Court to grant the Petition for rehearing.

Respectfully submitted, Bernard A. Golding, 432 Niels Esperson Bldg., Houston, Texas, Attorney for Petitioner, On Appeal Only.

I certify that this Petition for Rehearing is being presented in good faith and not for purposes of delay, and that a copy has been furnished Respondent.

Bernard A. Golding, 432 Niels Esperson Bldg., Houston, Texas, Attorney for Petitioner, On Appeal Only.

[fol. 69] I

The Court erred in holding that Petitioner was properly denied admission to practice because:

"* * * he did not worship in any formalized manner."

and, because of,

> "* * * his efforts on behalf of the Defendants in the Rosenberg Case."

in violation of the First and Fifth Amendments, United States Constitution.

II

The Court erred in holding that Petitioner was properly denied admission to practice, *not* because the evidence or Record disclosed that he had not discharged the burden of proof, or because he did not otherwise qualify, but because:

> he (Petitioner) declined to re-submit his application to the Bar Committee which had already evinced its hostility to him, and no further information could have been supplied the Bar Committee had it been re-committed.

in violation of the Due Process Clause, Fifth Amendment, United States Constitution.

III

The Court erred in holding that in affirming such denial to practice it did not offend Due Process of Law, and that [fol. 70] the evidence and procedures used in the absence of substantial evidence justified affirmation of this cause.

Wherefore, premises considered, Petitioner respectfully prays for Rehearing in this cause; that oral argument be granted; that the Judgment entered be withdrawn, the cause be reversed, and for such other and further relief, as Petitioner may be justly entitled.

Respectfully submitted, Bernard A. Golding, 432 Niels Esperson Bldg., Houston, Texas, Attorney for Petitioner, On Appeal Only.

Tom Martin Davis of Baker, Botts, Andrews & Shepherd, Niels Esperson Building, Houston, Texas, and Frank J. Knapp of Butler, Binion, Rice & Cook, Gulf Building, Houston, Texas, represent Houston Bar Association.

[fol. 71] IN UNITED STATES COURT OF APPEALS

[Title omitted]

ORDER DENYING REHEARING—July 20, 1954

Motion for rehearing filed by appellant July 12, 1954 is after due consideration, denied.

* * * * * * *

[fol. 72] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 73] SUPREME COURT OF THE UNITED STATES—OCTOBER TERM, 1954

No. 394

In the Matter of Application of Ben G. Levy for Admission to Practice in United States District Court, Southern District of Texas, Petitioner.

ORDER ALLOWING CERTIORARI.—Filed November 22, 1954.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.